1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS 2 § 3 MARY THOMAS, **Civil Action No.:** 4 Plaintiff, § § 5 v. 6 § § § BLUESTEM BRANDS, INC. d/b/a **JURY TRIAL DEMANDED** 7 FINGERHUT, § 8 Defendant. § 9 10 **COMPLAINT** 11 MARY THOMAS ("Plaintiff"), by and through her attorneys, KIMMEL & 12 SILVERMAN, P.C., alleges the following against BLUESTEM BRANDS, INC. d/b/a 13 FINGERHUT ("Defendant"). 14 15 **INTRODUCTION** 16 17 1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act 18 ("TCPA"). 19 20 JURISDICTION AND VENUE 21 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. 22 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012). 23 Defendant conducts business in the State of Texas, therefore, personal 3. 24 jurisdiction is established. 25 - 1 -

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

- 5. Plaintiff is a natural person residing in Houston, Texas.
- 6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).
- 7. Defendant has its principal place of business located at 6509 Flying Cloud Drive, Eden Prairie, Minnesota 55344.
 - 8. Defendant is a "person" as that term is defined by 47 U.S.C. § 153(39).
- 9. Defendant acted through their agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

- 10. Plaintiff has a cellular telephone number that she has had for over a year.
- 11. Plaintiff has only used this number as a cellular telephone number.
- 12. Beginning in or before January 2015, and continuing through March 2015, Defendant called Plaintiff on her cellular telephone on a repetitive and continuous basis.
- 13. When contacting Plaintiff on her cellular telephone, Defendant used an automatic telephone dialing system.
 - 14. Defendant's telephone calls were not made for "emergency purposes."
- 15. In February 2015, Plaintiff revoked any consent previously given to Defendant to place telephone calls to her cellular telephone number.

- 16. On the occasions in which Plaintiff spoke to Defendant's representatives following revocation of consent, they would become hostile upon Plaintiff's request for them to cease further communication.
- 17. Defendant heard and acknowledged Plaintiff's revocation of consent and demand to stop calling her cellular telephone number.
- 18. Despite the above, Defendant called thereafter and sent several letters to Plaintiff.

DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

- 19. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.
- 20. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system.
 - 21. Defendant's calls to Plaintiff were not made for emergency purposes.
- 22. Defendant's calls to Plaintiff were not made with Plaintiff's prior express consent as Plaintiff revoked consent.
- 23. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.
- 24. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

	25. As a	result of the above violations of the TCPA, Plaintiff has suffered the losses
1	and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles	
2		
3	damages.	
4		
5	WHEREFO	RE, Plaintiff, MARY THOMAS, respectfully prays for judgment as follows:
6	a.	All actual damages suffered pursuant to 47 U.S.C. §227(b)(3)(A);
7	b.	Statutory damages of \$500.00 per violative telephone call pursuant to 47
8		U.S.C. §227(b)(3)(B);
9	c.	Treble damages of \$1,500 per violative telephone call pursuant to 47
10		U.S.C. §227(b)(3);
11	d.	Injunctive relief pursuant to 47 U.S.C. §227(b)(3); and
12	e.	Any other relief deemed appropriate by this Honorable Court.
13		They cannot decembe appropriate by any fronteracto books.
14		
15	<u>DEMAND FOR JURY TRIAL</u>	
16	PLEASE TAKE NOTICE that Plaintiff, MARY THOMAS, demands a jury trial in this	
17	case.	
18		Respectfully submitted,
19		
20	Dated: June 5, 2015	Amy L. Bennecoff Ginsburg
21		Kimmel & Silverman, P.C. 30 East Butler Pike
22		Ambler, Pennsylvania 19002 Phone: (215) 540-8888
23		Facsimile (877) 788-2864 Email: aginsburg@creditlaw.com
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